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Filing date: **06/01/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181755
Party	Plaintiff Franciscan Vineyards
Correspondence Address	Stephen L. Baker Baker & Rannells, PA 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Linda Kurth
Filer's e-mail	officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com
Signature	/Linda Kurth/
Date	06/01/2009
Attachments	7th Notice Reliance.pdf ( 23 pages )(1428399 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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FRANCISCAN VINEYARDS, INC.,

Opposer,

v.

BEAUXKAT ENTERPRISES, LLC

Applicant.

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Opposition No. 91181755

Mark: BLACK RAVEN BREWING  
COMPANY

Serial No. 77223446

Filed: January 8, 2008

OPPOSER'S SEVENTH NOTICE OF RELIANCE  
PURSUANT TO 37 CFR §2.120(j)

Please take notice that Opposer, Franciscan Vineyards, Inc. pursuant to 37 CFR §2.120(j) is hereby noticing its reliance on the following:

- 1) Applicant's answer to an admission served upon Applicant during discovery, namely Request for Admission No. 19 and Applicant's answers thereto (namely Applicant's admission that it intends to sell wine at its brewpub). The Requests for Admission and Applicant's Answer thereto are annexed hereto as Exhibit A. The Admission is relevant to the similarity of the parties' respective promotion channels and to the likelihood of confusion.
- 2) Applicant's responses to Opposer's First Set of Interrogatories served upon Applicant during discovery, namely Interrogatory No. 1 and No. 4, and Applicant's answers thereto. The Interrogatories and Applicant's Responses thereto are annexed hereto as Exhibit B. The Responses are relevant to how Applicant intends to use its mark in commerce on goods other than beer that

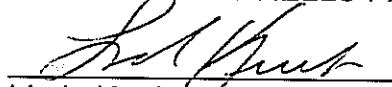
are similar to Opposer's goods under its marks and to the similarity of the parties' respective promotion channels and to the likelihood of confusion.

- 3) Applicant's Document Number BKE0001 attached hereto as Exhibit C. The document is relevant to showing how Applicant intends to use its mark in commerce, namely in conjunction with the separate image of a raven on its label, which is relevant to the issue of likelihood of confusion and Applicant's intent to cause confusion.
- 4) Downloads from Applicant's website showing the words Raven, Black Raven, Raven's Nest and the raven graphic and Applicant's label bearing the raven graphic all of which are being used separately from Applicant's Mark attached hereto as Exhibit D. The exhibit is relevant to the issue of likelihood of confusion as it shows how Applicant is using its Mark in commerce and how Applicant intends to cause confusion between its Mark and that of Opposer by using the ravens terms and graphics separately from its Mark.

Dated: June 1, 2009

Respectfully submitted,

BAKER and RANNELLS PA



Linda Kurth

Attorney for Opposer  
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Raritan, New Jersey 08869  
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## EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRANCISCAN VINEYARDS	)	
	)	Mark: BLACK RAVEN BREWING COMPANY
Opposer	)	Opposition No.: 91181755
v.	)	Serial No.: 77223446
	)	
BEAUXKAT ENTERPRISES LLC	)	
	)	
Applicant	)	
	)	

**APPLICANT'S RESPONSES TO OPPOSER'S SECOND SET OF  
REQUESTS FOR ADMISSION**

COMES NOW Applicant BeauxKat Enterprises, LLC by and through its attorneys of record, Romero Park & Wiggins P.S. and by way of responses to Opposer's Second Requests for Admission responds as follows:

16. Admit that Applicant plans to use its Mark on its brewpub as identified by Applicant in its Response to Opposer's Interrogatory #2.

RESPONSE: Admit.

17. Admit that Applicant has not executed a lease for real property at which Applicant intends to sell its Goods under its Mark.

RESPONSE: Deny.

18. Admit that Applicant did not perform a trademark search to determine availability of its Mark.

RESPONSE: Deny.

19. Admit that Applicant intends to sell wine at its brewpub as identified by Applicant in its response to Opposer's Interrogatory #2.

RESPONSE: Admit.

20. Admit that Applicant has applied for a liquor license in conjunction with the sale of Goods under Applicant's Mark.

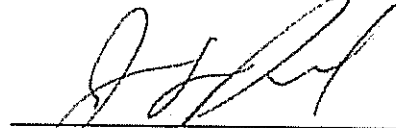
RESPONSE: Admit.

21. Admit that Applicant has applied for a liquor license in conjunction with serving its Goods under Applicant's Mark on premises at the brewpub as identified by Applicant in its Response to Opposer's Interrogatory #2.

RESPONSE: Admit.

DATED this 22<sup>nd</sup> day of August 2008.

ROMERO PARK & WIGGINS, P.S.



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Justin D. Park, WSBA #28340  
155 – 108<sup>th</sup> Avenue NE, Suite 202  
Bellevue, WA 98004  
(425) 450-5000  
(425) 450-0728 facsimile  
jpark@rpwfirm.com  
Attorney for Applicant

## **EXHIBIT B**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRANCISCAN VINEYARDS	)	
	)	Mark: BLACK RAVEN BREWING COMPANY
Opposer	)	Opposition No.: 91181755
v.	)	Serial No.: 77223446
	)	
BEAUXKAT ENTERPRISES LLC	)	
	)	
Applicant	)	
	)	

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF  
INTERROGATORIES**

COMES NOW Applicant, and below responds to Franciscan Vineyards' First Set of Interrogatories in accordance with Rules 26, 33 and 34 of the Federal Rules of Civil Procedure.

**GENERAL OBJECTIONS/DEFINITIONS**

Applicant objects to these Interrogatories to the extent that they:

1. Seek to impose duties and/or obligations not required or authorized by the Federal Rules of Civil Procedure that govern such discovery including requiring the production of documents already produced under FRCP 26 as Initial Disclosures;
2. Seek disclosure of information subject to the attorney/client privilege;
3. Seek disclosure of attorney work product exempt from disclosure;
4. Seek to elicit testimony; and,
5. Seek legal conclusions; and/or seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving these objections, Applicant further responds that many of the documents that are responsive to these requests were already produced by the Applicant as part of their initial disclosures under FRCP(a)(1)(B). Applicant has made an effort not to produce any document a second time in response to these requests, although some duplication may have resulted from the sheer volume of documents. Opposer is hereby notified that to the extent it may allege that the documents produced



along with these responses are insufficient as a response, it should review all documents produced in the initial disclosures as well.

Applicant further responds that all responsive documents currently in their possession have been produced; however, should Applicant identify any further documents which are responsive that are set to be completed in the near future, Applicant will supplement these responses in a timely manner. Applicant further responds as follows:

**INTERROGATORY NO. 1:** Describe, by common commercial name, each product that is intended to be sold or offered for sale in the United States under Applicant's Mark.

**ANSWER:**

Core beer products:   Black Raven IPA  
                              Black Raven Morrighan's Stout  
                              Black Raven Pale Ale  
                              Black Raven Second Sight Scotch

Seasonal products to be determined.

General merchandise/promotional items to be determined.

Glassware

T-Shirts

Coasters

**INTERROGATORY NO. 2:** Identify all of Applicant's intended distributors, suppliers, sellers, and licensees of each product identified in response to Interrogatory No. 1.

**ANSWER:**

Black Raven beers to be sold on premise retail (brewpub).

Black Raven beers sold wholesale through self distribution.

**INTERROGATORY NO. 3:** Identify all tradeshow in the United States where any of Applicant's Goods bearing Applicant's Mark will be shown.

**ANSWER:**

GABF (Great American Beer Festival) Denver, CO.

CBC/WBC (Craft Brewers Conference/World Beer Cup) Location TBD

**INTERROGATORY NO. 4:** Identify all media through which Applicant intends to promote Applicant's Goods bearing Applicant's Mark in the United States

**ANSWER:**

Print, Web/Internet.

**INTERROGATORY NO. 5:** For each product identified in response to Interrogatory No. 1, describe in detail the trade channels by which each product will travel from Applicant to the ultimate end user of such product in the United States.

**ANSWER:**

On premise retail (brewpub).  
Wholesale self distribution.

**INTERROGATORY NO. 6:** Identify the person(s) with the most knowledge concerning Applicant's intended use of Applicant's Mark in the United States.

**ANSWER:**

Robert P. Bowman Jr.  
Kathryn Gillespie

**INTERROGATORY NO. 7:** Set forth the date and circumstances under which Applicant first became aware of Opposer's RAVEN Marks.

**ANSWER:**

When the first letter from Opposer was received.

**INTERROGATORY NO. 8:** Identify all expert witnesses whose views or opinions have been sought by or on behalf of Applicant, whether or not such expert is expected to testify during Applicant's testimony period, concerning any aspect of this proceeding, and state the area of expertise of such witness.

**ANSWER:** Objection. The date for identification of experts and opinions of said experts has not yet arrived. Applicant reserves the right to supplement this response should experts be identified.

**INTERROGATORY NO. 9:** Identify all surveys or studies every conducted by or for Applicant concerning confusion or likelihood of confusion between Applicant,

Applicant's Mark, or Applicant's Goods on the one hand, and Opposer, any of Opposer's Goods and/or Services, or Opposer's Marks on the other hand.

**ANSWER:** None.

**INTERROGATORY NO. 10:** Identify each publication or item of advertising or promotional material in which Applicant has advertised or promoted or will advertise or promote each product identified in Interrogatory No. 1, including the date of each such publication or item of advertising or promotional material and the type of persons to whom the item was distributed.

**ANSWER:** Print media to be determined.

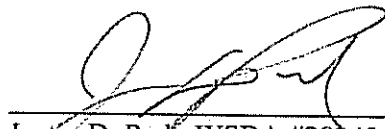
**INTERROGATORY NO. 11:** Identify each name, address and title all persons who participated in any way in the preparation of the answers or responses to these Interrogatories, including those persons who were consulted in the course of answering or responding to such interrogatory, and the documents relied upon in preparing such answers.

**ANSWER:**

Robert P. Bowman Jr.  
Kathryn Gillespie  
Justin Park (attorney for Applicant)

DATED this 4<sup>th</sup> day of June 2008.

ROMERO PARK & WIGGINS, P.S.



---

Justin D. Park, WSBA #28340  
155 - 108<sup>th</sup> Avenue NE, Suite 202  
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jpark@rpwfirm.com  
Attorney for Applicants

## **EXHIBIT C**



## **EXHIBIT D**



SHALT REDMOND BE BARREN OF BREWER WITH TAPROOM?  
QUOTH THE RAVEN... "NEVERMORE"

[HOME](#) [BEERS](#) [BREWERY](#) [TAPROOM](#) [CONTACT](#) [OUR STORY](#) [DIRECTIONS](#) [STORE](#)

## WELCOME TO THE RAVEN'S NEST...

Thank you for visiting our website! We are a brand new brewery on the Eastside of Seattle.

The Black Raven is a true neighborhood brewery with a retail taproom. We are the Eastside's home to world-class, small-batch brewed ales & lagers. We also feature a continually changing hand-picked selection of other notable Washington State beers. And most importantly, home to local beer lovers who want to be a part of a community that enjoys great beer and great friends.

Want to stay up to date with our brewery? Please sign up for our e-mail newsletter below. We promise not to abuse it and we will not share your information with anyone else. You can also submit inquiries and comments via our **contact** page.

Cheers & we look forward to seeing you at the Raven.

(425) 881-3020



More updates to come soon.

## Photos!



## New Sign is up

We have our new signs up. One faces Willows Road and the other 95th Street. No confusion where the Raven is.

[Photo 4/4/2009]

## Taproom at night

A view from behind the bar at the Ravens Nest taproom.

[Photo 4/5/2009]



### **Brewhouse at work**

Brewing Totem Pale ale  
Friday night.

[Photo 4/3/2009]



### **Top of the world**

Beaux putting some final  
tank connections  
together.

[Photo 4/5/2009]



### **Your friendly Raven brewers**

Beaux and Andy working  
on water boil test batch  
of system.

[Photo 3/12/2009]





SHALT REDMOND BE BARREN OF BREWER WITH TAPROOM?  
 QUOTH THE RAVEN... "NEVERMORE"

HOME BEERS BREWERY TAPROOM CONTACT OUR STORY DIRECTIONS STORE

## WELCOME TO THE RAVEN'S NEST...

The Raven's Nest is the official retail face of Black Raven Brewing. We will pride ourselves on offering our neighbors great beer and top notch friendly service.

Our taproom will be open for all 21 and older guests. We will start out being open 6 days per week and then expand later.

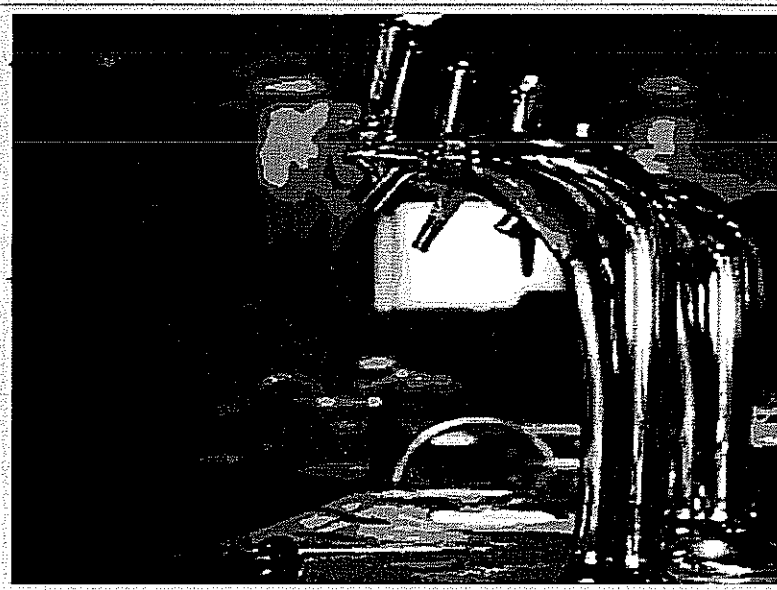
We look forward to having you join us in our neighborhood brewery taproom for a pint or two. We also will specialize in beer to go. We will have many options to take home or wherever. Growlers will be welcome at all times.

### Hours

**Monday: Closed**  
**Tuesday: 3pm - 9pm**  
**Wednesday: 3pm - 9pm**  
**Thursday: 3pm - 9pm**  
**Friday: 3pm - 10pm**  
**Saturday: Noon - 10pm**  
**Sunday: Noon - 7pm**

**21 and older only**

Taproom (425) 881-3020

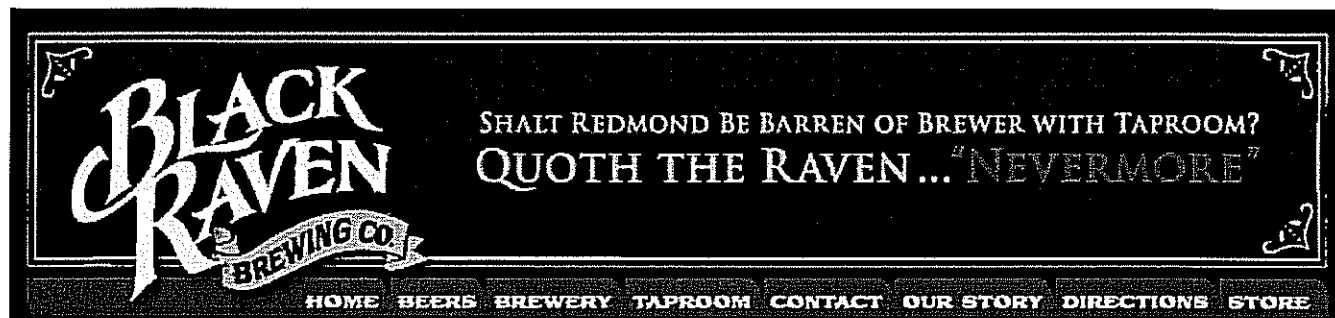


We have decided on a new opening schedule for the Raven's Nest taproom.

**Phase I (2009):** We will be offering quick retail to go growler fills, kegs, and bottles. We also will have about 32-34 seats for our guests to sit and enjoy a sample tray, pints, or schooners. We invite you to bring your own food or order something locally and have delivered. We will offer some light snacks while you enjoy our beers.

**Phase II (2009/2010):** Sometime after we get the brewery and tasting room dialed in, we will be adding a small kitchen and more seating.

This phased approach will enable us to better focus on our brewery and beers. Once we have that where we want it, we will move on to phase II.



## WELCOME TO THE RAVEN'S NEST...

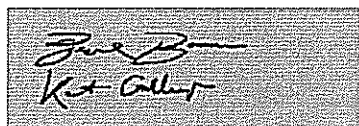
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Cheers & we look forward to seeing you at the Raven.

(425) 881-3020



Sign up for our Email Newsletter


**By Phone: 425-881-3020**

**By mail: 14687 NE 95th St Redmond WA 98052**

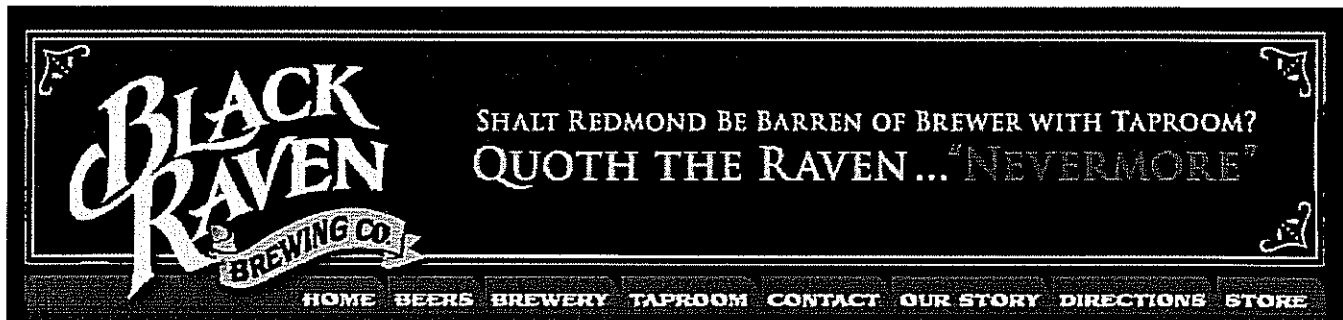
**Send us your comments or questions**

**Please tell us how to get in touch with you:**

**Name**

**E-mail**

NOTE: This does not sign you up for the newsletter. Use the "Sign up for our Email Newsletter" area to the left to join our mailing list.



## WELCOME TO THE RAVEN'S NEST...

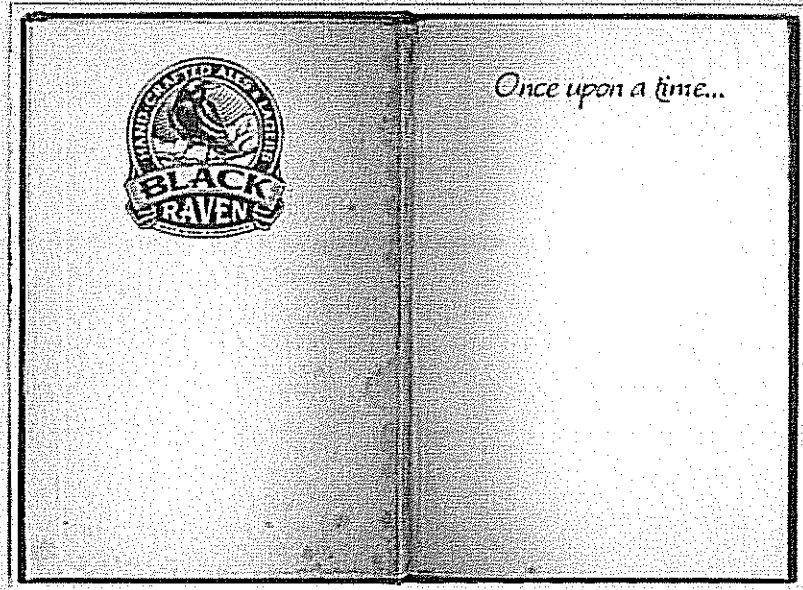
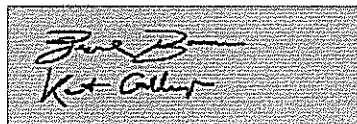
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## Why Black Raven you ask? (well somebody did...)

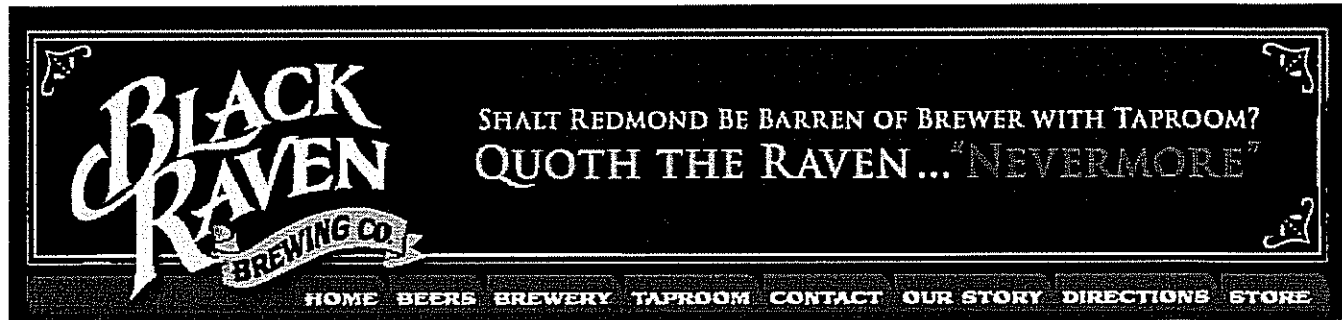
Ravens have long been held in high esteem by brewers, particularly in the British Isles. A famous London brewery once had a tame "mascot" raven named "Joey" that was thought to bring the brewery good luck. Many years ago while home brewing, our brewer/owner came across an old photo in an online stock photo database entitled "Brewer with tame raven". That photo was the inspiration for continuing the mystical brewery-raven connection, hence the Black Raven Brewing Company. This photo is now used on the home page of the Black Raven Brewing Company website.

Ravens are common birds in the North Cascade mountain range of western Washington. Black Raven Brewing Company is located in the foothills of the North Cascade mountain range. It is important for us to be a local brewery that puts focus on sourcing Washington grown and produced ingredients. As such, we felt that our brewery name and image should be tied to our state.

Another factor in the decision to use the raven was both owners Scottish roots. The raven has played an important role in folklore and is also associated with the British Isles and the culture of Scotland and England.

Combine the brewer-raven historical connection, the presence of ravens in our region, and the cultural influence from our ancestry, Black Raven Brewing Company was a logical choice for our brewery's name.

...plus they are really crafty birds, much like us!



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Cheers & we look forward to seeing you at the Raven.

(425) 881-3020



The Raven's Nest Taproom  
At  
Black Raven Brewing Company

14679 NE 95th ST  
Redmond, WA 98052

Quad 95 Complex on South-East corner of Willows & 95th





SHALT REDMOND BE BARREN OF BREWER WITH TAPROOM?  
QUOTH THE RAVEN... "NEVERMORE"

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GO



*brewer with some raven*

## LATEST NEWS

### New Beer!

Black Raven has brewed the second anniversary beer for the Malt & Vine in Redmond.

### Vertigenwoordigen voor de Oostkant

"Representing for the Eastside"

This delicious Belgian inspired golden/tripel was just released 5/15 and is going fast! Only 40 cases produced of this one.

750ml Belgian style bottle with crown and wax top.

Available exclusively at the Malt & Vine in Redmond (bottles and draft)

[www.maltandvine.com](http://www.maltandvine.com)

Photo credit (all below): Lee Killough



Ribbon cutting ceremony



Mayor taps first cask

### Cask sighting!

Friday 5/15 we threw down (on

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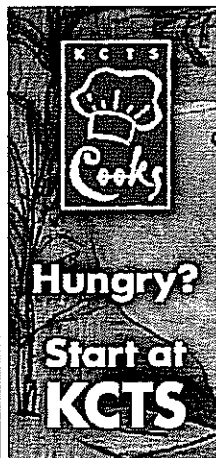
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## Black Raven Brewing Company

### Redmond's new neighborhood brew pub

Washington is a beer-loving state and has a number of small breweries turning out high quality hand-crafted beer. And now we have a new player in the game—Black Raven Brewing Company has landed in Redmond.

Black Raven's concept is to offer a neighborhood brewery with taproom. "We're a neighborhood place," explains Head Brewer/Owner Beaux Bowman. "Because we're small, we have the freedom to be creative and do one-off beers. And when people come in, there's a very good chance they'll be served by the brewer. They can ask questions and have a conversation about the beer. We're striving for a high level of service and attention. It's a more personal experience."



The Black Raven name comes from a long history of ravens/crows ("cravens" according to Beaux) showing up in folklore and literature in many cultures. Ravens have also long been held in high esteem by brewers and are common in the North Cascades. "Ravens are known for being very smart and crafty. When we first moved in and started our build-out, a crow flew up and dropped a partially smashed paper cup at the front door. We took it as a sign that they were ready for their beer," laughs Beaux.

Like most brewers, Beaux started home brewing as a hobby. When he graduated from college in 1999, he knew he didn't want to take the suit and tie route. What he was really interested in was beer (but not just in the way college guys are). He wanted to make it a career. Moving to Seattle in 2000, he started contacting breweries for work. He had been in quality control for Kodak and knew that the concepts/mindset of process control was similar in both industries ("but beer tastes better than developer"). In 2001, he started brewing at night for Mac & Jack's and stayed for about 2-1/2 years. He then worked for Far West before becoming the head brewer at the University Village Ram, staying from 2005-2007. "After 6-7 years of brewing, I felt confident about starting my own business," says Beaux.

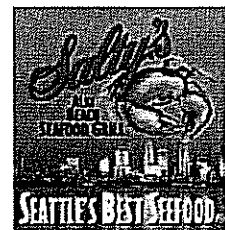
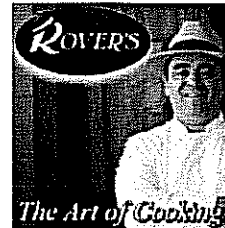


Naturally, not everything went according to plan. It took him and partner/girlfriend Kathryn Gillespie a year and a half to find the right location. They wanted to fill the void they saw in Redmond, plus they live in Redmond and hate to commute. "We've both always wanted to own our own business," explains Beaux. Kathryn works at Microsoft and will maintain that job while working part-time on the operations side of Black Raven. They hired brewer Andy Lapworth who just moved back to the area from Southern California. "Andy worked at the Tustin Brewing Company. We met at an American Brewers Guild course. When he moved here, it all worked for us to hire him," says Beaux. "He's really into different types of beer. We like to say we're putting the crafty into craft brewing—it's the raven craftiness coming out. The unusual will definitely be making their

appearances."

Photo: from bottom, Owner/Brewer Beaux Bowman, Owner Kathryn Gillespie, Brewer Andy Lapworth

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THE OCEANOGRAPH



Black Raven will open in two phases. First, the brewery will start producing and a small retail tasting room will open. Second, the tasting room will expand and a small kitchen will be added. "Before our kitchen opens, we'll encourage people to either bring in their own food or support local places like Flying Saucer Pizza which is right by us and matches our hours," says Beaux. "We'll have 2-3 products to start. Until we get all our beers ready, we'll have guest handles in the tasting room. Those will all be Washington breweries." Down the road, the current offices will be remodeled into a larger room to be used as overflow in busy times or private event space for small groups (20-30). Beaux is estimating phase two will happen within a year. "We'll be self-distributing in year 1 and will sell to restaurants, bars and pubs. But first we want to concentrate on dialing in what we're doing here and building a base as a neighborhood brewery."

The tap room seats 32-34. People can sit, have a pint or enjoy a flight. Beaux has made flight trays that have a Northwest, rugged look and hold six samples. Wood tables sit in the tap room along with some high-tops and small two tops. The bar seats 7-8. There's also plenty of free parking. For retail, they'll offer kegs to go, growler (1/2 gallon jugs) refills and bottled products. By summer, they should have 750 ml specialty beers and 22 ounce bottles. They won't sell six packs.

Black Raven will be a 15-barrel brewhouse (31 gallons in a barrel). Along with core beers, they'll be working with bourbon barrels and blending beers. These will be released over the next year. Bottled beer, called the Corbeaux Series will be Belgian-inspired and wood-aged beers. "Raven in French is 'corbeau.' I *had* to add the 'x'—it was just too close to my own name," laughs Beaux. They'll offer seasonal beers as well.

Their Federal brewing license arrived on March 27 and they began brewing their first batches. They'll run a modified open schedule starting April 9 at 3 p.m. until their grand opening the weekend of May 1. Check their website for hours.

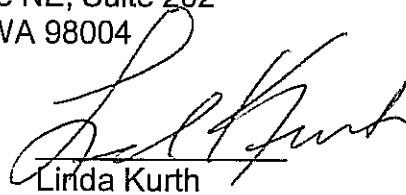
When it comes to beer, it looks like Redmond is the hot new place and Raven is the new black.

*Connie Adams/April 2009*

**CERTIFICATE OF SERVICE**

I hereby certify a copy of OPPOSER'S SEVENTH NOTICE OF RELIANCE in re:  
Franciscan Vineyards, Inc. v. Beauxkat Enterprises, LLC, Opp. No. 91181755 was  
served on counsel for Applicant, this 1st day of June, 2009 by sending same via First  
Class Mail, postage prepaid, to:

Justin D. Park  
Romero Park & Wiggins P.S.  
155-108<sup>th</sup> Avenue NE, Suite 202  
Bellevue, WA 98004



Linda Kurth